

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

JAN 25 2005
CHRIS R. JOHNSON, CLERK
PLAINTIFFS

MAINLINE FISHERIES

VS.

NO. 05-1006

SYSKO CORPORATION, BEAVER STREET
FISHERIES, INC., ROYAL AHOLD,
d/b/a AHOLD U.S.A. HOLDINGS, INC.,
US FOODSERVICE, INC., ALLIANT
FOODSERVICE, INC., FOODCOMM
INTERNATIONAL, SOUTHFRESH
CATFISH PROCESSORS, INC.,
GUIDRY'S CATFISH, INC.,
QUALITY FOODS, INC., H&N FOODS
INTERNATIONAL, INC., PLAZA
SEAFOOD WORLD, LLC, INFINITY
SEAFOODS INC., INTER CITY FISH
CO., INC., RED CHAMBER CO.,
UNITED PACIFIC SEAFOOD CO., LTD.,
and JOHN DOE DEFENDANTS 1-40

DEFENDANTS

JURY TRIAL REQUESTED

COMPLAINT - CLASS ACTION

Comes the plaintiff, Mainline Fisheries, and for its complaint against the
defendants, Sysco Corporation, Beaver Street Fisheries, Inc., Royal Ahold, d/b/a Ahold
U.S.A. Holdings, Inc., US Foodservice, Inc., Alliant Foodservice, Inc., Foodcomm
International, Southfresh Catfish Processors, Inc., Guidry's Catfish, Inc., Quality Foods,
Inc., H&N Foods International, Inc., Plaza Seafood World, LLC, Infinity Seafoods, Inc.,
Inter City Fish Co., Inc., Red Chamber Co., United Pacific Seafood Co., Ltd., and John
Doe Defendants 1-40, states:

INTRODUCTION

1. Defendants are domestic, foreign and multi-national corporations that have imported or assisted in the importing of a Vietnamese species of fish ("Pangasius bocourti") commonly referred to as "Basa" or "Tra" (hereafter "Vietnamese Basa") into the United States in violation of the Anti-Dumping Act of 1916. In 2003, the International Trade Commission, United States Department of Commerce, determined that Vietnamese Basa was being illegally dumped in the United States in violation of the Tariff Act of 1930, and imposed tariffs on the importation of Basa from Vietnam.

2. Defendants' illegal dumping caused a significant decrease in the price of whole catfish received by catfish farmers in the United States. Plaintiff and putative class representative Mainline Fisheries is a Catfish farming operation located in Ashley County, Arkansas. Plaintiff brings this action on behalf of all similarly situated catfish farmers in the United States pursuant to the private right of action under the Anti-Dumping Act of 1916, 15 U.S.C. § 72, for damages suffered because of the illegal dumping and the resulting decrease in the price paid to U.S. catfish farmers for whole catfish. In addition, Plaintiff brings this action on behalf of all similarly situated catfish farmers in Arkansas for violations of the Arkansas Deceptive Trade Practices Act, Ark. Code. Ann. § 4-88-101 et seq.

PARTIES

3. Plaintiff Mainline Fisheries is a catfish farming operation located in Ashley County, Arkansas which is organized as a general partnership with Wayne Branton as the managing partner. Plaintiff has been in operation since 1992 and raised and sold catfish to catfish processors throughout the time period relevant to this action.

4. Defendant Sysco Corporation is a for-profit corporation incorporated under the laws of the State of Delaware with its principal place of business in Houston, Texas. Defendant Sysco Corporation may be served with process by serving Capitol Corporate Services, Inc., 101 S. Spring Street, Suite 220, Little Rock, AR 72201.

5. Defendant Beaver Street Fisheries, Inc. is a for-profit corporation under the laws of the State of Florida with its principal place of business in Jacksonville, Florida. Defendant Beaver Street Fisheries, Inc. may be served with process by serving Alfred Frisch, 1741 W. Beaver St., Jacksonville, FL 32209. Defendant Beaver Street Fisheries is wholly owned by Defendant Sysco Corporation.

6. Defendant Royal Ahold is a for-profit corporation with its principal place of business in the Netherlands. Defendant Royal Ahold's United States operations are conducted by Ahold U.S.A. Holdings, Inc. Defendant Ahold U.S.A., Inc. is a for-profit corporation incorporated under the laws of the State of Massachusetts with its principal office in Landover, Maryland. Defendant Ahold U.S.A. may be served with process by serving Corporation Service Company, 84 State Street, Boston, Massachusetts 02109. Defendant US Foodservice, Inc. is a for-profit corporation incorporated under the laws of the State of Delaware with its principal place of business in Columbia, Maryland.

7. Defendant U.S. Foodservice, Inc. may be served with process by serving the Corporation Service Company, 120 East Fourth St., Little Rock, AR 72201. Defendant U.S. Foodservice is wholly owned by Defendant Royal Ahold, d/b/a Ahold U.S.A. Holdings, Inc.

8. Defendant Alliant Foodservice, Inc. is a for-profit corporation incorporated under the laws of the State of Delaware with its principal place of business in Deerfield,

Illinois. Defendant Alliant Foodservice is wholly owned by Defendant U.S. Foodservice, Inc. Defendant Alliant Foodservice, Inc. may be served with process by serving Illinois Corporation Service Co., 801 Adlai Stevenson Drive, Springfield, Ill, 62703-4261.

Defendant Alliant Foodservice, Inc. also may be served with process by serving the Corporation Service Company, 120 East Fourth St., Little Rock, AR 72201.

9. Defendant Foodcomm International is a for-profit corporation incorporated under the laws of the State of California with its principal place of business in Palo Alto, California. Defendant Foodcomm International may be served with process by serving Gregory Bourke, 4260 El Camino Real, Palo Alto, CA 94306.

10. Defendant Southfresh Catfish Processors, Inc. is a for-profit corporation incorporated under the laws of the State of Mississippi with its principal place of business in Indianola, Mississippi. Defendant Southfresh Catfish Processors, Inc. may be served with process by serving R. Julian Allen, III, 267 Three Way Rd., P.O. Box 848, Indianola, MS 38751.

11. Defendant Guidry's Catfish, Inc. is a for-profit corporation incorporated under the laws of the State of Louisiana with its principal place of business in Henderson, Louisiana. Defendant Guidry's Catfish, Inc. may be served with process by serving Bobby J. Guidry, Ches Courville Rd, Henderson, LA 70517.

12. Defendant Quality Foods, Inc. is a for-profit corporation incorporated under the laws of the State of Arkansas with its principal place of business in Little Rock, Arkansas. Defendant Quality Foods may be served with process by serving Glenn Blayney, 4901 Asher Avenue, Little Rock, AR 72204.

13. Defendant H&N Foods International, Inc. is a for-profit corporation incorporated under the laws of the State of California with its principal place of business in San Francisco, California. Defendant H&N Foods International, Inc may be served with process by serving Hua Ngo, 125 Bayshore Blvd., San Francisco, CA 94124. Defendant Piazza Seafood World, LLC. is a for-profit corporation incorporated under the laws of the State of Louisiana with its principal place of business in Harahan, Louisiana. Defendant Piazza Seafood World , LLC may be served with process by serving Mike Sabolyk, 505 Commerce Point, Harahan, LA 70123.

14. Defendant Infinity Seafoods Inc. is a for-profit corporation incorporated under the laws of the State of Massachusetts. Defendants Infinity Seafoods, Inc. may be served with process by serving Andrew Forman, 6 Straw Stone Lane, Norton, MA 02766. Defendant Inter City Fish Co., Inc. is a for-profit corporation incorporated under the laws of the State of New York with its principal place of business in New York. Defendant Inter City Fish Co., Inc. may be served with process by serving Michael Canno, 121 Andrew Rd., Manhasset, New York, 11030.

15. Defendant Red Chamber Co. is a for-profit corporation incorporated under the laws of the State of California with its principal place of business in Vernon, California. Defendant Red Chamber Co. may be served with process by serving David L. Prince, 1912 East Vernon Ave., Vernon, California 90058.

16. Defendant United Pacific Seafood Co, Ltd. is a for-profit corporation incorporated under the laws of the State of California with its principal place of business in Long Beach, California. Defendant United Pacific Seafood Co., Ltd. may be served

with process by serving Christopher Turner, 5911 E. Spring St., Suite, 388, Long Beach, California, 90808.

17. Each of the above Defendants, in conspiracy or combination with one or more Vietnamese processor or importer/exporter or Co-Defendant, assisted in importing Vietnamese Basa into the United States and commonly and systematically sold Vietnamese Basa in the United States at prices that violated the Antidumping Act of 1916. Each of the defendants had, or joined a conspiracy which had, the intent of injuring the U.S. Catfish farming industry during the time period relevant to this lawsuit. Defendants John Doe 1 through 40 are entities that, in conspiracy or combination with one or more Vietnamese processor or exporter or Co-Defendant, assisted in importing Vietnamese Basa into the United States and commonly and systematically sold Vietnamese Basa in the United States at prices that violated the Antidumping Act of 1916. Defendants John Doe 1 through 40 had, or joined a conspiracy which had, the intent of injuring the U.S. Catfish farming industry during the time period relevant to this lawsuit.

JURISDICTION AND VENUE

18. The Court has federal question jurisdiction over the claim under the Anti-Dumping Act of 1916 pursuant to 15 U.S.C. 72 and 28 U.S.C. 1331. The Court has pendant jurisdiction over the conspiracy claim and the claim under the Arkansas Deceptive Trade Practices Act.

19. This Court has personal jurisdiction over the defendants because each of the defendants (a) engaged in business in the State of Arkansas, (b) delivered its products into the stream of commerce with the expectation that they would be purchased by

consumers in Arkansas among other customers in the United States market, (c) engaged in or assisted in the illegal dumping of Vietnamese Basa that caused tortuous injury to catfish farmers and catfish processors that it knew or should have known reside in Arkansas, and/or (d) participated with other defendants and co-conspirators in a conspiracy to illegally dump Vietnamese Basa such that acts in furtherance of the conspiracy were conducted in Arkansas, Vietnamese Basa was sold in Arkansas, the conspiracy was directed at injuring catfish farmers in Arkansas, and the conspiracy had foreseeable effects in Arkansas.

20. Venue is proper in this district pursuant to 15 U.S.C. §72 and 28 U.S.C. §1391(b) and (d) because the plaintiff resides in this district and the court has personal jurisdiction over each of the defendants.

BACKGROUND FACTS

21. U.S. catfish farmers produce approximately 600 million pounds of channel catfish (*Ictalurus Punctatus*) per year from approximately 190,000 acres devoted to catfish aquaculture. Approximately ninety-five percent of U.S. Catfish farmers are located in four states – Alabama, Arkansas, Louisiana and Mississippi. Since the 1990's the U.S. Catfish farmers in these four states have expended significant amounts of money to modernize aquaculture farming techniques and marketing techniques, creating increased demand for U.S. farm-raised channel Catfish. Demand for farm-raised catfish has increased significantly since the early 1990s and continued to increase throughout the time period relevant to this lawsuit.

22. Vietnamese Basa is a white fish with similar characteristics (color, size and texture) and uses to U.S. farm-raised channel catfish. Vietnamese Basa is raised in cages

in the Mekong River without the strict health and environmental restrictions that apply to U.S. farm-raised Catfish.

23. Defendants and their co-conspirators initially attempted to market and label Vietnamese Basa in the United States as “basa,” “china sole,” “white grouper,” “white roughy,” and “white river cobbler,” among other names, without successful sales. In 1997, less than one million pounds of Vietnamese Basa was imported into the United States.

24. Defendants and their co-conspirators then targeted the Catfish market that had been established by the U.S. Catfish farming industry. Until federal and state labeling laws prohibited the practice, Vietnamese Basa was sold by the defendants and/or their co-conspirators as “catfish.” Defendants and their co-conspirators sold Vietnamese Basa through the same channels of distribution as Catfish. Often, Vietnamese Basa was sold under product names that were deliberately similar to U.S. producer’s brand names or that implied a U.S.-origin, such as “Delta Fresh Farm Raised Catfish” (compare “Delta Pride Catfish”), “Harvest Fresh Catfish” (compare “Harvest Select Catfish”), and “Farm Select Catfish” (compare “Farm Fresh Catfish”). Names suggesting U.S. Origin, such as “Cajun Delight Catfish” were used. Often, the packaging included pictures of whiskered fish, suggesting that the product was U.S. farm-raised channel catfish, rather than the whiskerless Basa.

25. When the defendants and their co-conspirators began selling and marketing Vietnamese Basa as catfish in this manner, and at a price substantially below U.S. farm-raised catfish, imports and sales rose dramatically. Imports of frozen fish fillets of Vietnamese Basa increased from less than one million pounds in 1997, to approximately

10 million pounds in 2000, almost 25 million pounds in 2001, and over 35 million pounds in 2002. During the same time period, as determined by the International Trade Commission, imports from other countries of fish marketed through the same channels of distribution as Catfish were insignificant and declining.

26. From 1995 until 2000, the monthly average price per pound paid to U.S. Catfish farmers for whole catfish fluctuated between \$0.69 and \$0.79. In 2001, the price per pound paid for whole catfish began to decrease dramatically, with a low for 2001 of \$.0566 in November. In 2002, the price remained significantly below the price U.S. Catfish farmers needed to make any profit, ranging from \$0.544 (December) to \$0.59 (July). The price remained significantly depressed in 2003 with a low of \$0.529 in January and a high of \$0.629 in December.

27. On June 28, 2002, the Catfish Farmers of America, among others, filed a petition with the U.S. International Trade Commission, alleging that catfish farmers and catfish processors in the United States were being materially injured and threatened with material injury by reason of illegal dumping of Vietnamese Basa into the United States.

28. On August 8, 2002, the Commission published a preliminary determination that there is "a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of certain frozen fish fillets from Vietnam that are allegedly sold in the United States at less than fair value."

29. The Commission determined that the data "indicated widespread underselling; specifically subject imports undersold domestic like product in every quarter for which there were sales of products from both countries, notwithstanding strong demand and increasing apparent U.S. consumption throughout the time." The

Commission determined that the average unit value for processed catfish fillets imported from Vietnam declined steadily from \$1.99 per pound in 1999 to \$1.69 per pound in 2000 to \$1.41 per pound in 2001 to \$1.31 per pound in interim 2002. In reaction to this underselling, the average unit value (per pound) received by U.S. Catfish processors declined from \$2.75 in 2000 to \$2.57 in 2001 to \$2.23 in interim 2002.

30. Because U.S. Catfish farmers sell virtually all of their live Catfish to U.S. Catfish processors there was a corollary decline in the price per pound received by U.S. Catfish farmers, as outlined above. The Commission determined that there was a 0.962 correlation between the price of whole fish sold to processors and the price of frozen fish fillets sold by processors between January 1999 and March 2002.

31. On January 31, 2003, the Commission published its preliminary determination that Vietnamese Basa (in the form of frozen fish fillets) was being illegally dumped at less than fair value in violation of the Tariff Act of 1930. A final determination was published on June 16, 2003 and an amended final determination was published on July 24, 2003.

32. On August 12, 2003, the Commission published notice of an antidumping duty order related to the Vietnamese Basa, applying weighted average dumping margins applicable to the Vietnamese processors who conspired with Defendants ranging from 36.84 to 47.05.

33. Since the application of the dumping margins, the unit price received by U.S. Catfish farmers for whole catfish has begun to recover. In 2004, the unit price ranged from \$0.668 to \$0.728, compared to \$0.529 to \$0.63 during the same period in 2003 and \$0.549 to \$0.586 during the same time period in 2002.

CLASS ALLEGATIONS

34. Plaintiff brings this action under Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and on behalf of the following National Class and Arkansas Sub-Class:

a. National Class: All catfish farmers in the United States who sold catfish to U.S. catfish processors during the time of December 17, 2000 and the date this action was filed. Excluded from the Class are the Defendants and their directors, officers, and members of their officers' and directors' families.

b. Arkansas Sub-Class: All catfish farmers in the State of Arkansas who sold catfish to U.S. catfish processors during the time period of December 17, 1999 and the date this action was filed. Excluded from the Class are the Defendants and their directors, officers, and members of their officers' and directors' families.

35. Based on data published by the Agricultural Statistics Board, United States Department of Agriculture, Plaintiff estimates that there were approximately 1250 catfish farmers in the United States and approximately 195 catfish farmers in Arkansas during the time period relevant to this action. Therefore, both the National Class and the Arkansas Class are so numerous that joinder is impracticable. Joinder is also impracticable considering the members of the Class are located in multiple counties in Arkansas and scattered throughout the United States.

36. Plaintiff suffered commonly with other members of the National Class and Arkansas Class in that they all received significantly less per pound for their whole catfish due to the illegal dumping by the Defendants.

37. Plaintiff has engaged counsel experienced and competent in class action litigation and complex litigation. The interests of the Plaintiff are equal to and not contrary to those of the National Class or the Arkansas Class. Plaintiff, as a representative of the National Class and Arkansas Class, will fairly and appropriately protect the interests of the Class.

38. Plaintiff's claims are typical of those of all class members because the Plaintiff and all class members were damaged by the same wrongful conduct, Defendants' illegal dumping, and suffered the same decrease in price per unit for whole catfish during the same time period.

39. The questions of law and fact common to the members of the National Class and Arkansas Class predominate over any questions affecting only individual members of the class. These questions include, but are not limited to:

- a. Whether each of the defendants has imported or assisted in importing Vietnamese Basa into the United States.
- b. Whether each of the defendants has commonly and systematically sold or caused to be sold in the United States, and/or imported into the United States, Vietnamese Basa at prices substantially less than the actual market value or wholesale price of such Basa, at the time of exportation to the United States in the principal markets of the country of their production, or of other foreign countries to which they are commonly exported after adding to such market value or wholesale price, freight, duty, and other charges and expenses incident to the importation and sale of such products in the United States.

c. Whether each of the Defendants has undertaken the above-described conduct with the intent of destroying or injuring the catfish farming industry in the United States.

d. Whether Defendants' conduct violated the Anti-Dumping Act of 1916 and, relevant to the Arkansas Sub-Class, the Arkansas Deceptive Trade Practices Act;

e. Whether Defendants acted in concert to conspire to violate the Anti-Dumping Act of 1916 and, relevant to the Arkansas Sub-Class, the Arkansas Deceptive Trade Practices Act; and

f. Whether Defendants' conduct caused injury to the Plaintiff and the members of the Class, and, if so, the appropriate class-wide measure of damages.

40. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The complexity of the case and expense and burden of individual litigation make it virtually impossible for the Class and Arkansas subclass members individually to seek redress for the wrongful conduct alleged. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

COUNT ONE
(VIOLATION OF THE ANTIDUMPING ACT OF 1916)

41. Each of the defendants has imported or assisted in importing Vietnamese Basa into the United States.

42. Each of the defendants has commonly and systematically sold or caused to be sold in the United States, and/or imported into the United States, Vietnamese Basa at prices substantially less than the actual market value or wholesale price of such Basa, at the time of exportation to the United States in the principal markets of the country of

their production, or of other foreign countries to which they are commonly exported after adding to such market value or wholesale price, freight, duty, and other charges and expenses incident to the importation and sale of such products in the United States.

43. Each of the defendants has undertaken such conduct with the intent of destroying or injuring the catfish farming industry in the United States.

44. The defendants' actions are illegal under the Antidumping Act of 1916, 15 U.S.C. §72. The defendants have violated the Act and combined and conspired with other defendants to violate the Act.

45. The Plaintiff and all similarly situated catfish farmers in the United States have been injured in their business and property by reason of the defendants' violation, or combination or conspiracy to violate, the Antidumping Act of 1916.

46. Under the Antidumping Act, the Plaintiff and all similarly situated catfish farmers are entitled to recover threefold the damages sustained, and the cost of the suit, including a reasonable attorney's fee.

COUNT TWO
(CONSPIRACY TO VIOLATE THE ANTIDUMPING ACT)

47. Plaintiff repeats and realleges all paragraphs of this complaint.

48. Each Defendant acted in concert with other Defendants and co-conspirators to conspire to violate the Antidumping Act in that Defendants acted in concert to accomplish a purpose that was unlawful or oppressive to the injury of another.

49. As a result of Defendant's violation of Antidumping Act, Plaintiff and members of the National Class have suffered actual damages to which Defendants are jointly and severally liable.

COUNT THREE
(VIOLATION OF ADTPA)

50. Plaintiff repeats and realleges all paragraphs of this complaint.

51. Each of the Defendants is a "person" for the purposes of the Deceptive Trade Practices Act, pursuant to Ark. Code Ann. §4-88-102(3).

52. Vietnamese Basa constitutes a "good" within the meaning of Ark. Code Ann. § 4-88-102(6).

53. The acts committed by Defendants as alleged in the preceding paragraphs -- including but not limited to (a) violation and assistance in the violation of the Antidumping Act of 1916, (b) violation in and assistance in the violation of the Tariff Act of 1930, (c) dumping and the assistance in dumping Vietnamese Basa in the United States, and (d) using deception in the sale of Vietnamese Basa to the detriment of the plaintiff and the Arkansas Class -- are deceptive and unconscionable trade practices made unlawful and prohibited by Ark. Code Ann. § 4-8-101, *et seq.*

54. Each of Defendants' unconscionable and deceptive trade practices violates Ark. Code Ann. §4-88-107.

55. Plaintiff and members of the Arkansas Class have suffered actual damages and injuries as a result of Defendants' unconscionable and deceptive trade practices. Plaintiff and members of the Arkansas Class are entitled to recover actual damages and reasonable attorney's fees and costs.

COUNT FOUR
(CONSPIRACY TO VIOLATE THE ADTPA)

56. Plaintiff repeats and realleges all paragraphs of this complaint.

57. Each Defendant acted in concert with other Defendants and co-conspirators to conspire to violate the ADTPA in that Defendants acted in concert to accomplish a purpose that was unlawful or oppressive to the injury of another.

58. As a result of Defendant's violation of the ADTPA, Plaintiff and members of the Arkansas Class have suffered actual damages to which Defendants are jointly and severally liable.

59. Plaintiff demands a jury trial.

WHEREFORE, Plaintiff prays:

A. That this Court determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, that Plaintiff is a proper class representative, and that the best practicable notice of this action be given to members of the class represented by Plaintiff;

B. That judgment be entered against Defendants and in favor of the Plaintiff and the class on all Counts alleged in this complaint and award appropriate damages;

C. For imposition of litigation costs and attorney fees against the Defendants in accordance with the Antidumping Act of 1916 and the ADTPA; and

D. For all other and further relief as this Court may deem necessary or appropriate.

Respectfully submitted,


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